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**IN THE  
COURT OF APPEALS OF INDIANA**

LLOYD E. PHILPOTT,  
Appellant-Respondent,

VS.

NOLA I. PHILPOTT,  
Appellee-Petitioner.

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No. 79A02-0707-CV-618

APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Thomas H. Busch, Judge  
Cause No. 79D02-0610-DR-365

**April 18, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Lloyd E. Philpott (“Husband”) appeals from a dissolution decree awarding Nola I. Philpott (“Wife”) one-half of his pension and one-half the equity in the marital residence. We affirm.

## **Issue**

Did the trial court abuse its discretion in dividing the pension and the equity equally between the parties?

## **Facts and Procedural History**

The facts most favorable to the trial court’s judgment indicate that Husband and Wife were married on August 14, 1987. At that time, Husband owned a home free and clear valued at \$35,000. Wife sold her home and spent \$10,000 to remodel Husband’s home, which became the marital residence and was titled in both parties’ names. Wife remodeled the kitchen a second time with her relatives’ assistance.

Six months after the marriage, Husband retired at age fifty-five from his job at TRW, where he had worked for thirty-seven years. Husband received monthly pension benefits and later received social security. Wife was the survivor beneficiary of Husband’s pension. Wife worked for Purdue University at the time of the marriage and became disabled two years later. She received monthly disability benefits of approximately \$600, half of which she gave to Husband to cover household expenses. Wife later received social security.

The parties separated on October 7, 2006, and Wife petitioned to dissolve the marriage on October 31, 2006. At the time of the final hearing on May 11, 2007, the parties had

agreed to the division of all marital assets except the marital residence and Husband's pension. At the conclusion of the hearing, the trial court remarked,

The parties have been married twenty years. And each of them put all they could into their life together, among which, and I think most significantly from what you talked about today, is the house, is a house that's in both names. And you each had a house to begin with, but you downsized to one house and it's the Court's view that the equity in that one house should be divided between the two of you. [Wife has] lived off the husband's pension for twenty years and it's my view that that pension should be divided equally between the two of you.

Tr. at 20.

The parties did not request findings of fact or conclusions thereon. On June 19, 2007, the trial court issued a dissolution decree that reads in pertinent part as follows:

4. That there are no children of the marriage and the Wife is not currently pregnant.
5. That Husband shall keep the 2005 Subaru Forester L.L. Bean wagon and Husband shall pay to wife the sum of \$9,600.00, representing one-half (1/2) of the value of said vehicle. Wife shall have no further interest thereon.
6. That Husband shall pay to Wife the sum of \$12,109.00, representing equalization of the bank accounts and IRAs of the parties.
7. That Wife shall receive one-half (1/2) of Husband's pension thru his employer through a Qualified Domestic Relations Order to be prepared by counsel for Wife. Until such time as said Qualified Domestic Relations Order is approved, Husband shall pay directly to Wife the sum of \$302.00 every month representing her one-half (1/2) interest in said Qualified Domestic Relations Order in said pension plan.
8. That the parties agree that there is \$80,700.00 equity in the marital residence .... That Husband shall pay to Wife one-half (1/2) the equity in said residence within ninety (90) days of the date of this Decree of Dissolution.

9. That in satisfaction of the \$21,709.00 which Husband owes to Wife for the parties' vehicle, their bank accounts and IRAs, the Husband shall pay the sum of \$10,000.00 either directly to Wife or to Counsel for Wife via certified check or money order in the sum of \$10,000.00 no later than Friday, May 18, 2007 at 4:00 p.m.
10. That Husband shall pay to Wife the remaining balance of \$11,709.00 plus one-half (1/2) the equity in the marital residence within ninety (90) days of the date of this Decree.
11. That if Husband does not pay to Wife one-half (1/2) the equity in the marital residence plus the additional \$11,709.00 within ninety (90) days of the date of this Decree, counsel for each party shall report the same to the Court and the marital residence shall immediately be listed for sale.
12. That once the marital residence is sold, the Wife shall receive \$52,059.00 from the sale of the residence after paying costs of mortgage, realtor, and other sale customary closing costs. Any remaining equity in said residence after the amounts set forth in this paragraph are paid shall be paid to Husband.

Appellant's App. at 5. Husband now appeals.

### **Discussion and Decision**

Husband challenges the trial court's division of his pension and the equity in the marital residence. Indiana Code Section 31-15-7-4 governs property division and reads as follows:

- (a) In an action for dissolution of marriage under IC 31-15-2-2, the court shall divide the property of the parties, whether:
  - (1) owned by either spouse before the marriage;
  - (2) acquired by either spouse in his or her own right:
    - (A) after the marriage; and
    - (B) before final separation of the parties; or
  - (3) acquired by their joint efforts.
- (b) The court shall divide the property in a just and reasonable manner by:
  - (1) division of the property in kind;

- (2) setting the property or parts of the property over to one (1) of the spouses and requiring either spouse to pay an amount, either in gross or in installments, that is just and proper;
- (3) ordering the sale of the property under such conditions as the court prescribes and dividing the proceeds of the sale; or
- (4) ordering the distribution of benefits described in IC 31-9-2-98(b)(2) or IC 31-9-2-98(b)(3) that are payable after the dissolution of marriage, by setting aside to either of the parties a percentage of those payments either by assignment or in kind at the time of receipt.

Indiana Code Section 31-15-7-5 further addresses property division as follows:

The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
  - (A) before the marriage; or
  - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
- (5) The earnings or earning ability of the parties as related to:
  - (A) a final division of property; and
  - (B) a final determination of the property rights of the parties.

Husband contends that it was neither just nor reasonable to divide his pension and the equity in the marital residence equally between the parties. In addressing Husband's contention, we use the following standard of review:

When a trial court makes specific findings on its own motion, the general judgment will control as to the issues upon which the court has not found and the specific findings control only as to the issues they cover. We may not reverse the trial court's findings in such circumstances unless they are clearly

erroneous. Findings are clearly erroneous only if the record contains no facts supporting them either directly or by inference.

....

Subject to the statutory presumption that an even distribution of assets is just and reasonable, the disposition of marital property is committed to the sound discretion of the trial court. A party challenging the trial court's division of marital assets must overcome a strong presumption that the trial court complied with the statute. Reversal is appropriate only where the decision is clearly against the logic and effect of the facts and circumstances.

*Lung v. Lung*, 655 N.E.2d 607, 609-10 (Ind. Ct. App. 1995) (citations omitted), *trans. denied* (1996). “We will not reweigh the evidence or assess the credibility of the witnesses and will consider the evidence in the light most favorable to the judgment. Although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court.” *England v. England*, 865 N.E.2d 644, 648 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*.

In claiming that the trial court abused its discretion, Husband directs us to the following language from *Swinney v. Swinney*: “The term ‘just’ invokes a concept of fairness and of not doing wrong to either party; however, ‘just and reasonable’ does not necessarily mean equal or relatively equal.” 419 N.E.2d 996, 998 (Ind. Ct. App. 1981), *trans. denied*. Husband’s argument boils down to an assertion that the disputed assets “were virtually entirely acquired prior to the marriage by the sole efforts of the Husband. The Wife’s financial contributions to the marriage were minimal compared to the Husband’s both in pre-marital assets and those contributed during the marriage.” Appellant’s Br. at 6.

Husband's argument relies in part on disputed facts unfavorable to the trial court's judgment,<sup>1</sup> disregards facts that support the judgment, and ignores the significant disparity between the parties' economic circumstances at the time of dissolution. Wife sold the home she lived in prior to the marriage and, according to her testimony, spent \$10,000 to remodel the marital residence. She performed a second remodeling with her relatives' assistance and helped Husband maintain the property.<sup>2</sup> The home was titled in both parties' names, and Wife contributed half her monthly income to household expenses.

Six months into the marriage, Husband retired at age fifty-five, and Wife became disabled a year and a half later. At the time of the final hearing, Wife's sole source of income was \$665 in monthly social security benefits, whereas Husband received more than two and a half times that amount in monthly social security and pension benefits (\$1100 and \$604, respectively). Wife was the survivor beneficiary of Husband's pension. She points out that

[e]ven with the trial court dividing Husband's pension equally between the parties, Husband would still be receiving \$1,402.00 per month (representing \$1,100 per month in social security benefits and \$302.00 per month from his pension), while Wife would only be receiving \$967.00 per month (representing

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<sup>1</sup> At the hearing, Husband denied that Wife spent \$10,000 from the sale of her home to remodel the marital residence and claimed that she "tore up the house" during the second renovation. Tr. at 11. On appeal, Husband complains that Wife withdrew \$8365.52 from a joint checking account before she petitioned for dissolution, but he neglects to mention that he withdrew an even larger amount (\$9800.79) and closed the account. Husband also complains that he did not have sufficient cash to pay Wife to equalize the parties' bank accounts and IRAs, but his counsel suggested otherwise at the hearing. *See id.* at 10 ("Q[:] Would you agree that [Wife] has \$12,109.00 coming to her? A[:] I don't have that much money in the bank. Q[:] Well, when we looked at your banking statements you did. A[:] I don't think so.... Q[:] Okay. Well, we'll have to look and verify.").

<sup>2</sup> Wife testified that she and her relatives remodeled the kitchen while Husband was out of the home recuperating from a stroke. According to Wife, the remodeling "made him mad and he never got over it. He said he'd rather be single, so---." Tr. at 16.

\$665.00 per month in social security benefits and \$302.00 from her Husband's pension).

Appellee's Br. at 18.

In light of the foregoing evidence most favorable to the trial court's judgment, we conclude that Husband has failed to establish that the trial court abused its discretion in dividing his pension and the equity in the marital residence equally between the parties. *See Grimes v. Grimes*, 722 N.E.2d 374 (Ind. Ct. App. 2000) (finding no abuse of discretion in equal division of husband's retirement plan, where parties were separated eight years prior to wife petitioning for dissolution and wife did not work for first nineteen years of marriage), *trans. denied*. Consequently, we affirm the dissolution decree.

Affirmed.

BARNES, J., and BRADFORD, J., concur.